

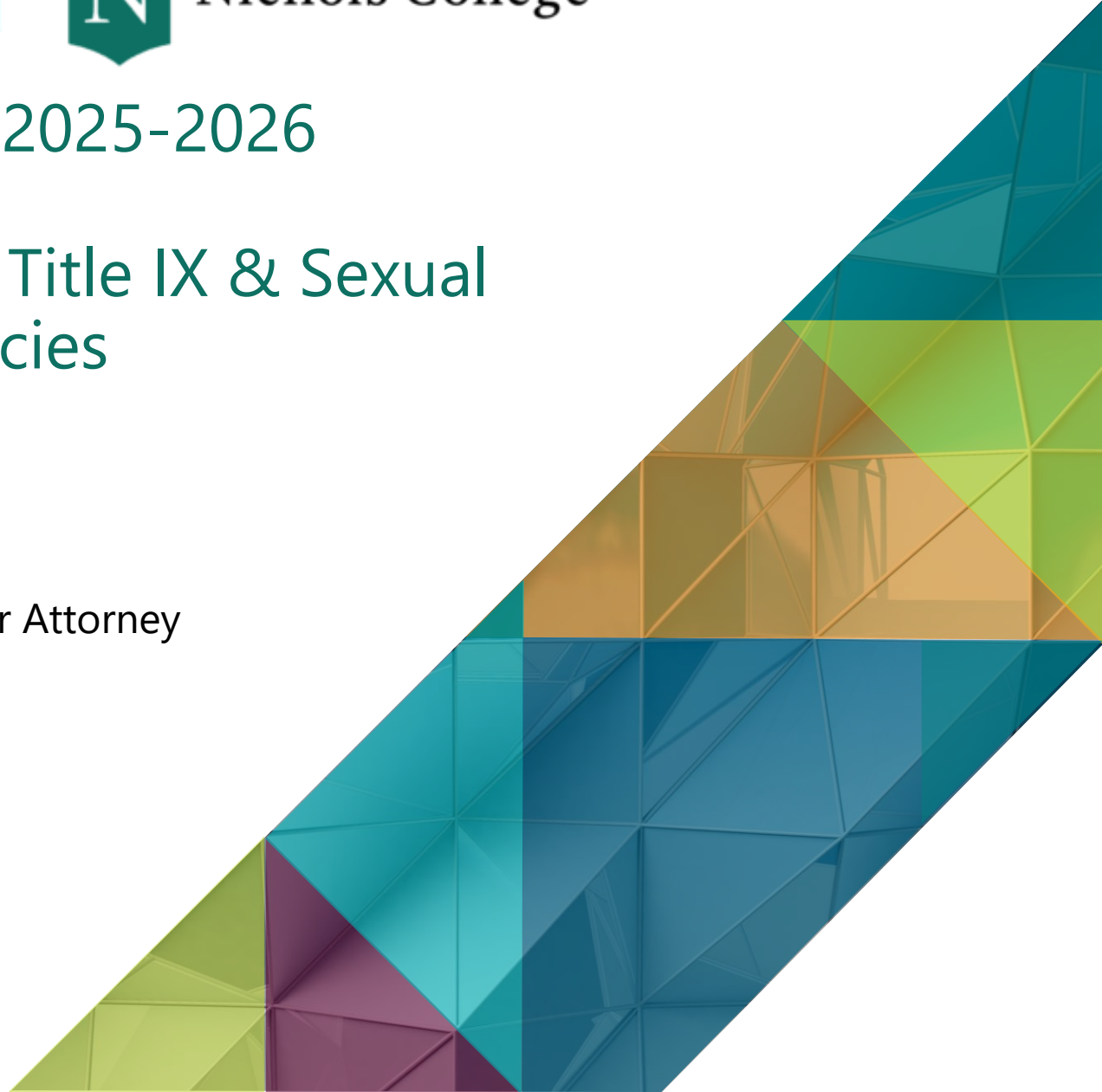


Title IX Training 2025-2026

## Nichols College Title IX & Sexual Misconduct Policies



**Brigid Harrington**, Senior Attorney



## Presenter Contacts



**Brigid Harrington, Senior Attorney**

Boston

+1 (617) 648-2754

[bharrington@hunton.com](mailto:bharrington@hunton.com)

# Agenda

- Prohibited Conduct
  - Title IX Policy & Sexual Misconduct Policy
- Procedures for adjudicating Complaints
- Conducting Investigations and Hearings
  - Gathering information
  - Drafting reports
  - Avoiding bias



# The Policies

# The Policies

## Nichols College Title IX Policy

- I. Purpose and Scope**
- II. Definitions**
- III. Prohibited Conduct**
- IV. Reporting Sexual Misconduct**
  - A. How to Make a Report
  - B. Employee Reporting Expectations
  - C. Confidential Resources
  - D. Anonymous Reporting
  - E. Timeliness of Report
  - F. Amnesty
  - G. How to File a Complaint
- V. How the College Responds to Reports**
  - A. Supportive Measures
  - B. Resources
  - C. Options for Resolution
  - D. Initial Assessment by Title IX Coordinator
- VI. Procedures for Resolving Complaints**
  - A. Title IX Review, Dismissal &/or Consolidation of Complaints
    - 1. Mandatory Dismissal of Complaints
    - 2. Permissive Dismissal of Complaints
    - 3. Notice and Effect of Dismissal
    - 4. Consolidation of Complaints
  - B. Emergency Removal
  - C. Informal Resolution Process
  - D. Principles Applicable to All Grievance Procedures
  - E. Advisors
  - F. Formal Resolution Process
    - 1. Investigation
      - a. Notice of Investigation
      - b. Collection of Evidence
      - c. Case File
      - d. Investigative Report
    - 2. Hearing
      - a. Case Presentation
      - b. Record of Hearing
      - c. Written Determination
      - d. Sanctions and Remedies
    - 3. Appeal
- VII. Record Retention**
- VIII. Modification and Review Policy**

# The Policies

## Nichols College Sexual Misconduct Policy

- I. Purpose and Scope of Policy**
  - A. Scope
  - B. Coordination with Non-Discrimination Policy
- II. Notice of Non-Discrimination**
- III. Prohibited Conduct and Definitions**
- IV. Reporting Sexual Misconduct**
  - A. How to Make a Report
  - B. Employee Reporting Expectations
  - C. Confidential Resources
  - D. Anonymous Reporting
  - E. Timeliness of Report
  - F. Amnesty
  - G. How to File a Complaint
- V. How the College Responds to Reports**
  - A. Supportive Measures
  - B. Resources
  - C. Options for Resolution
  - D. Initial Assessment by Title IX Coordinator
- VI. Procedures for Resolving Complaints**
  - A. Title IX Review, Dismissal &/or Consolidation of Complaints
  - B. Emergency Removal of Respondent
  - C. Principles Applicable to All Aspects of Grievance Procedures
  - D. Advisors
  - E. Informal resolution
  - F. Formal Resolution
    - 1. Investigation
      - a. Notice of Investigation
      - b. Collection of Evidence
      - c. Case File
      - d. Investigative Report
    - 2. Resolution of Complaint
      - a. Written Determination
      - b. Sanctions and Remedies
    - 3. Appeal
- VII. Record Retention**
- VIII. Modification and Review of Policy**

## The Policies

### Title IX Policy

- Applies only to conduct on-campus, or in a Nichols program or activity
- Applies only in the U.S.

### Sexual Misconduct Policy

- Applies to any sex-based conduct, anywhere, that impacts participation in a Nichols program or activity  
—Includes academics, employment



# Title IX Policy Violations



# Title IX Policy Violations

**Must** occur within the U.S.

**Must** occur in a University program or activity

- Including on University property

Complainant must be participating or attempting to participate in a College program or activity

## Title IX Policy Violations

### Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following:

- An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct
- Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity
- Sexual Assault, Dating Violence, Domestic Violence, or Stalking

# Title IX Policy Violations

Sexual Assault: Any **sexual act** directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. . . Includes:

- Rape – **Penetration**, no matter how slight, of the **vagina or anus** with **any body part or object**, or **oral penetration by a sex organ or sex-related object**
- Criminal Sexual Contact – Intentional touching of **clothed or unclothed body parts** without consent for the **purpose of sexual degradation, sexual gratification, or sexual humiliation**; or the **forced touching by the victim** of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

# Title IX Policy Violations

Domestic Violence: A **crime** of violence committed by:

- Current or former spouse or intimate partner
- Child in common
- Current or former cohabitation **as a spouse or intimate partner**
- Protected from each other by DV, family violence laws

Dating Violence: Violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the victim

- Consider length of relationship, type of relationship, frequency of interaction

# Title IX Policy Violations

Stalking: Engaging in a **course of conduct** directed at a **specific individual** that would cause a **reasonable person** to:

- Fear for the individual's safety or safety of others
- Suffer **substantial emotional distress**

Course of conduct = 2 or more acts

- Reasonable person = similar circumstances, identities as victim
- Substantial emotional distress = may require medical or other professional treatment

## Title IX Policy Violations

---

Retaliation: No individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy or because the individual has **made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy**

# Sexual Misconduct Policy Violations

Complainant may be anyone

Conduct may occur anywhere, but must impact University programs or activities

Overlap with: Title IX Policy

- May be consolidated such that Title IX process applies

Overlap with: Non-Discrimination Policy

- College will coordinate

# Sexual Misconduct Policy Violations

**Same/similar to Title IX Policy (just expanded jurisdiction)**

- Sexual Harassment
  - Severe OR pervasive
- Sexual Assault
- Stalking
- Retaliation



# Sexual Misconduct Policy Violations

Sexual Exploitation: Act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage or any other non-legitimate purpose

○ Examples:

- Observing another's nudity or sexual activity without their knowledge, or allowing another to observe sexual activity without the consent of all involved
- Non-consensual streaming or distribution of sexual activity or nudity without the consent of all involved
- Photographing or taping someone in a state of undress or engaging in sexual activity without their consent, or distributing such photographs, video, or audio
- Voyeurism
- Inducing incapacitation – providing someone with alcohol or drugs, **with or without that person's knowledge, for the purpose of making another person vulnerable to non-consensual sexual activity**

# Common Definitions

Consent: Voluntary, **informed**, uncoerced agreement through words or actions freely given, which could be **reasonably interpreted as willingness to participate in mutually agreed-upon sexual acts**

Consent **cannot** exist:

- With physical force or a reasonable belief of the threat of physical force
- With duress
- When one individual overcomes the physical limitations of another individual
- When an individual is **incapable of making an intention decision to participate in a sexual act**

Consent is act-specific, can be withdrawn

Silence/lack of resistance does not equal consent

## Common Definitions

---

Incapacitation: A state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. . . . Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where an individual **knows or ought reasonably to have understood that the individual is incapacitated**, constitutes a violation. . .

# Hypothetical

You are assigned to investigate whether Logan, an undergraduate student, sexually assaulted his fellow student, MaryAnne. You gather the following evidence:

- Logan and MaryAnne were both present at a party where David Michael saw Logan put a substance into a communal punch bowl. Mallory, who was also at the party, says that she saw MaryAnne, who was drinking a beer, call an Uber for her and Logan around midnight.
- Logan's roommate, Jonathan, tells you that, shortly after midnight, he was lying in bed and heard Logan speaking with another person in their shared on-campus apartment. Jonathan fell asleep, but woke at some point during the night and heard vomiting in their shared bathroom.
- Stacy also attended the party, but in her witness interview says that she does not remember anything from that night, and shares that she woke up naked in bed with another student, Charlie, the next morning.

What are your next steps?



# Nichol's Adjudication Processes

## Reports and Complaints

- A **Report** tells the Title IX Coordinator that Prohibited Conduct may have occurred
  - All non-confidential employees are **mandatory reporters**
  - Reports may be filed anonymously
    - Does not fill mandatory reporter obligation
- A **Complaint** is a request for the Title IX Coordinator to resolve Prohibited Conduct
  - Complaints must be in writing
  - Complaints cannot be anonymous

# Supportive Measures

Can be provided  
regardless of  
whether  
Complaint is filed

Must be offered to  
both parties if a  
Complaint is filed

Non-disciplinary,  
non-punitive

No charge

Reasonable

Private (NOT  
confidential)

# Emergency Removal

Available for students *if* an individualized safety and risk analysis has determined an immediate threat to the physical health or safety of any individual

Student may meet with TIXC to contest removal

- May have advisor present



# Initial Assessment of Reports or Complaints

## Title IX Coordinator determines how to proceed

- TIXC-initiated complaint
- Investigation
- Dismissal
- Other remedial action
- Referral

# Dismissal

## Mandatory:

- If conduct would not violate Title IX Policy
  - Can refer to another policy

## Optional:

- If Complainant withdraws in writing
- If Respondent is no longer enrolled or employed by College
- If specific circumstances prevent the College from gathering sufficient evidence to reach a determination

Dismissal is subject to appeal

# Grievance Processes

Prompt &  
equitable

Equal rights to  
participate

Right to an advisor  
of choice

Administrators  
participating must  
be free of bias or  
conflict of interest

Presumption of  
good faith  
reporting

Presumption of  
non-responsibility

Expectation of  
cooperation from  
community  
members

# Informal Resolution Process

Available only after  
Complaint has been  
filed

Facilitated by trained  
individual

Title IX Coordinator  
must approve pursuit  
of informal resolution  
& agreed resolution

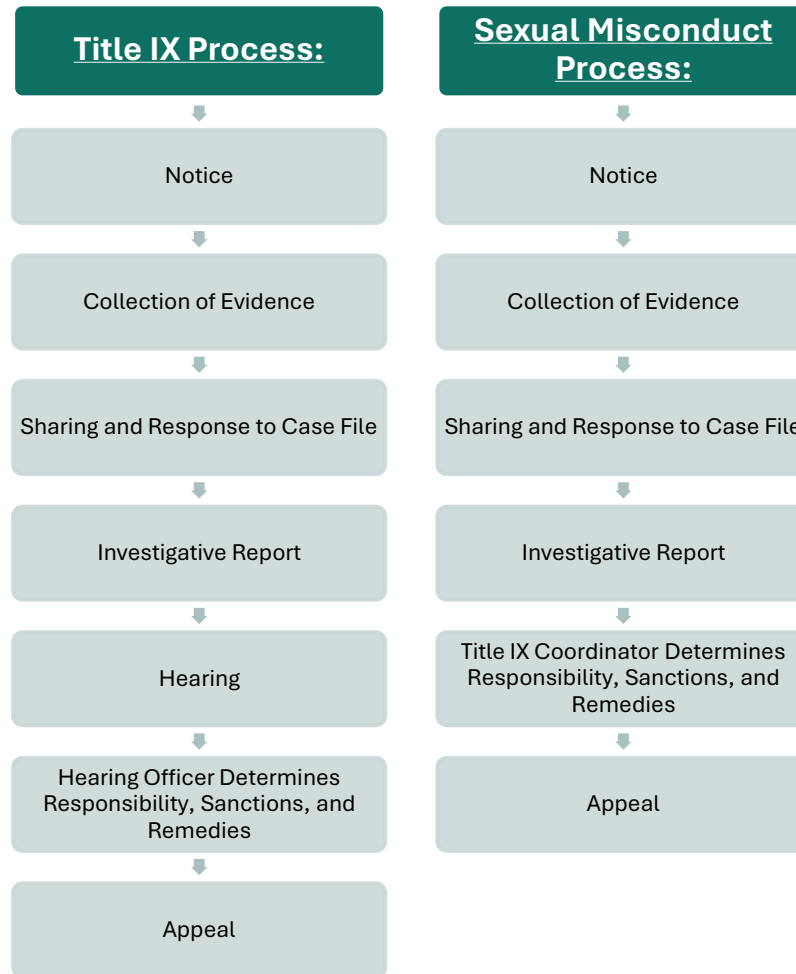
Not available in  
matters involving a  
student vs. an  
employee

Voluntary

Parties can withdraw

Typically 30 days to  
complete

# Title IX Process vs. Sexual Misconduct Process



# Notice

Provided to both parties

Sets the scope of the investigation

Allegations: who, what, where, when (if known)

Applicable policy sections

Additional allegations/charges  
→ additional notice

# Investigation

Goal: Gather relevant, permissible evidence

- Interview witnesses, gather documents, video, etc.

## Relevance

Evidence is relevant if it tends to show that conduct occurred as alleged, or tends to show that conduct did not occur as alleged

- Character evidence is not generally relevant
- Evidence about the credibility of a witness or party's account is relevant



### Evidence that is not permissible (even if relevant):

- Evidence about a Complainant's prior sexual behavior or disposition
  - Unless offered to prove consent, or that someone other than Respondent committed alleged conduct
- Medical/counseling or other privileged records obtained without written consent

# Gathering Evidence

## Do:

- Listen first, circle back for details later
  - Details are crucial, may take more than one interview
  - Ask for definitions of words
- Allow for time to answer
- Allow for breaks, acknowledge emotions
- Ask for phone/documentary evidence → get it in the interview!
- Ask: Who else should I talk to?
- Ask: What am I missing?

## Don't:

- Ask leading questions
- Imply judgment (may have to explicitly state that you are not judging)
- Explicitly identify with parties or witnesses
- Make assumptions based on identification with a party or witness
- Make assumptions based on characteristics of a party or witness

# The Case File

## All “directly related” evidence

- Including evidence that may not appear in investigative report

## Witness interviews, documents, videos

## FERPA redacted

## Provide to parties and allow them to respond

- What if response includes additional relevant witnesses or information?

## Title IX Hearing

Hearing Officer will review investigation report and evidence

- May request to hear from witnesses who were interviewed by investigator

Parties may request witnesses

All questions from parties to other party and witnesses will be posed by their advisor

# Role of Title IX Hearing Officer

Relevance determinations

Independent assessment of evidence and credibility

Determination of responsibility based on preponderance of the evidence standard

# Investigative/Hearing Reports: Synthesizing Evidence

Compare accounts, documents, timestamps

What makes sense?

You may never see the full picture [Insert graphic of a puzzle with a piece missing]

Pieces may not fit together

# Investigative/Hearing Reports: Synthesizing Evidence

Compare accounts,  
documents, timestamps

- What makes sense?

You may never see the full  
picture

- Pieces may not fit together

# Assessing Credibility

Credibility of an account is not equal to credibility of a person

Credibility can be impacted by:

- Opportunity to observe
- Intoxication
- Memory

Some aspects of an account may be credible, while others may not be



Credibility is  
not equal to  
demeanor!

# Nichols Population

- 1,164 undergraduate, 239 graduate students  
—1054 of undergraduates are full-time
- 64.8% male, 35.2% female, 0% other
- 70% identify as white; 26% as racial/ethnic minorities
- 30% awarded Pell Grants
- 40% from out of state
- International students from 18 countries

Sources: U.S. News & World Report; collegefactual.com

# Avoiding Bias

- Actual bias vs. the appearance of bias
  - Goal: Avoid both
- Implicit bias: a negative attitude, of which one **is not consciously aware**, against a specific social group
  - Thought to be shaped by experience and based on learned associations
  - Social categories may include race, gender, disability
- Mitigating strategies:
  - Create new associations
  - Minimize bias in decision making

Source: American Psychological Association; Project Implicit

# Implicit Bias

## Project Implicit-based Research:

- Implicit and Explicit Attitudes Toward African Americans and Barack Obama Did Not Substantively Change During Obama's Presidency
- Health Care Providers Favor Heterosexual People over Lesbian and Gay People
- Implicit Black-weapon Associations Weakened Over Time in Increasingly Multiethnic Metropolitan Areas
- Attitudes Toward People with Intellectual Disability Associated with Integrated Sports Participation

Source: Project Implicit

# Avoiding Implicit Bias in Investigations and Hearings

- Creating and recognizing associations
  - Know your campus
  - Do not make assumptions about the parties/witnesses → instead ask them about their thought process, decision
- Minimize bias in decision-making
  - Articulate the basis of your finding
  - Scrutinize your conclusions for implicit bias
  - Share your reasoning with others

# The Effects of Trauma

- Trauma MAY impact:
  - Ability to remember
  - Feelings of blame/shame
  - Brain function → reactions to traumatic event
- During a traumatic event, victims may experience
  - Self-protective habits
  - Dissociation
  - Immobility
- Response to trauma may be shaped by childhood/other prior experiences
  - You may not know about/be able to predict responses
- REGARDLESS of trauma, memory may be unreliable
  - The brain does not operate like a video camera
  - Memories impacted by state of mind, perspective

# Trauma-Informed Investigations

- Avoid the appearance of judgment
- Be curious – ask questions to understand the situation
- Allow space for emotions
- Allow support/items to put interviewee at ease
- Recognize that you may never see all of the pieces of the puzzle

EVALUATE THE EVIDENCE THAT YOU HAVE, NOT THE EVIDENCE YOU DO NOT HAVE

- Indications of trauma are part of the puzzle but, on their own, do not necessarily mean that a Policy violation occurred

# Writing Reports – Sample Outline

- I. Executive summary/intro
- II. Procedural Steps
  - a. Every step between filing of complaint and issuing of report
  - b. Notice, witness interviews, case file shared, etc.
- III. Applicable Policy Sections
- IV. Summary & assessment of evidence
- V. Conclusion/Determination and Next Steps
  - a. Investigative report – who will you provide report to
  - b. Hearing report – include determination, sanctions (including who will implement), remedial measures, and appeal rights



## Writing Reports – Best Practices

Group evidence chronologically, by event

Conclusions about credibility, responsibility, should flow logically from the evidence

- You should be able to state why you were/were not able to find an event likely occurred

## Writing Reports – Exercise

Using the information that we have discussed about MaryAnne's complaint, outline your report and include information that you would expect to gather

# Writing Reports – Exercise

- I. Summary & assessment of evidence
- II. Background information about the parties
- III. Information about the party
  - a. MaryAnne's account
  - b. Logan's account
  - c. Witness accounts
- IV. Information about the parties leaving the party
  - a. Uber receipts?
- V. Information about events at Logan's apartment
  - a. MaryAnne's account
  - b. Logan's account
  - c. Witness accounts